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Fiduciaries see Collins proviso as a betrayal

Maine senator defends move to exempt some B-Ds from standard; activities excluded 'limited'

By Mark Schoeff Jr.

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As the battle over the inclusion of a fiduciary standard in a comprehensive financial-regulatory-reform bill intensifies, advocates of imposing the standard on all advice givers expressed disappointment in an amendment offered by Sen. Susan Collins, R-Maine, last Thursday.

Fiduciary-standard proponents said that her amendment includes only a weak standard for broker-dealers, exempting those who sell just mutual funds and variable annuities. Proponents had been hoping that Ms. Collins would be a major ally.


Ms. Collins defended her amendment Friday to *InvestmentNews* in an e-mail response to questions. In the e-mail, she wrote that a recent hearing focusing on The Goldman Sachs Group Inc. showed that broker-dealers do not consider it to be their duty to look out for small investors.

"My amendment would impose a legal obligation for broker-dealers to act in the best interests of their customers, except for those broker-dealers selling only a limited range of proprietary products," Ms. Collins wrote.

In a statement issued Thursday after Ms. Collins offered her amendment, Barbara Roper, director of investor protection for the Consumer Federation of America, fired a volley at the senator, on whose support her group had been counting.

"It is frankly stunning that someone who has championed the fiduciary duty would propose an amendment that leaves unsophisticated investors so vulnerable to

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abuse," Ms. Roper said.

Advocates of an all-encompassing fiduciary standard also were angered last week by an e-mail sent to senators by the National Association of Insurance and Financial Advisors, which quoted Luis Aguilar, a member of the Securities and Exchange Commission, as saying, "No standard, not even the fiduciary standard, has teeth unless it is properly implemented and enforced."

The e-mail urged senators to oppose an amendment sponsored by Sen. Robert Menendez, D-N.J., and Sen. Daniel Akaka, D-Hawaii, that would require broker-dealers to act in the best interests of their retail clients and disclose conflicts of interest — the same standard that applies to investment advisers. The provision would give the SEC latitude to apply the standard to institutional investors as well.

The amendment, which differs only slightly from a provision in the House bill passed in December, would replace language now in the Senate bill which presently calls only for a study of the issue.

Fiduciary advocates cried foul over the NAIFA e-mail blast, asserting that Mr. Aguilar's comments were taken out of context. The SEC commissioner issued a statement last Tuesday to clarify his position.

"Broker-dealers who provide advisory services to investors should be held to the same fiduciary standard as investment advisers," Mr. Aguilar said.

In a statement on its website, NAIFA defended itself.

"Commissioner Aguilar's quote was used to illustrate NAIFA's concerns about the enforcement of a fiduciary standard; it was not intended to characterize Commissioner Aguilar's position on the broader question of whether to extend a fiduciary duty standard to broker-dealers," the group stated.

NAIFA's e-mail alert to Capitol Hill also argued that under its present funding and regulatory authority, the SEC will inspect 9% of investment advisers in each of the next two fiscal years. By contrast, the agency and the Financial Industry Regulatory Authority Inc. will inspect 55% of broker-dealers.

NAIFA asserted that there has been no effort to understand how the fiduciary standard compares with the suitability standard under which broker-dealers operate. Other opponents warn that a fiduciary standard would limit the ability of broker-dealers to charge commissions and offer proprietary products.

Advocates for a universal fiduciary standard dismiss those arguments.

"You have undoubtedly heard from some insurance and brokerage groups that this

